

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KEVIN LEE ESTES,

Plaintiff,

vs.

HEARINGS OFFICER SCANTLIN, et
al.,

Defendants.

NO: CV-12-5058-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING SECOND AMENDED
COMPLAINT

1915(g)

Magistrate Judge Hutton filed a Report and Recommendation on October 2, 2012, recommending dismissal of Mr. Estes' Second Amended Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Specifically, Magistrate Judge Hutton found that Plaintiff failed to present facts showing identified medical personnel were deliberately indifferent to his serious medical needs; he continued to name as Defendants entities who are not “persons” amendable to suit under 42 U.S.C. § 1983; Plaintiff persisted in asserting claims which could not have been exhausted prior to the commencement of this action; his challenge to his continued

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING SECOND AMENDED COMPLAINT -- 1

1 confinement was not properly presented; and Plaintiff's conclusory allegations,
2 without supporting facts, failed to state claims upon which relief may be granted.

3 There being no objections, the Court **ADOPTS** the Report and
4 Recommendation in its entirety. Accordingly, **IT IS ORDERED** the Second
5 Amended Complaint, ECF No. 39, is **DISMISSED** for failure to state a claim upon
6 which relief may be granted in this Court under 28 U.S.C. §§ 1915(e)(2) and
7 1915A(b)(1), but without prejudice to Plaintiff pursuing appropriate tort claims or
8 other actions in state court.

9 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
10 brings three or more civil actions or appeals which are dismissed as frivolous or for
11 failure to state a claim will be precluded from bringing any other civil action or
12 appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious
13 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
14 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint may**
15 **count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may**
16 **adversely affect his ability to file future claims.**

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
18 Order, enter judgment, forward copies to Plaintiff at his last known address, and
19 close the file. The District Court Executive is further directed to forward a copy of
20 this Order to the Office of the Attorney General of Washington, Criminal Justice

1 Division. The Court certifies any appeal of this dismissal would not be taken in
2 good faith.

3 **DATED** this 5th day of November 2012.

4 *s/ Rosanna Malouf Peterson*
5 ROSANNA MALOUF PETERSON
6 Chief United States District Court Judge
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